IN THE

Supreme Court of the United States

October Term 1951

No. 398

JOHN STEEL, LOUIS J. WARREN AND LOCAL UNION No. 254, OIL WORKERS INTERNATIONAL UNION, CIO,

Petitioners

VERSUS

OIL WORKERS INTERNATIONAL UNION, LOCAL No. 23, F. A. McDUFFIE, E. R. McADAMS AND GULF OIL CORPORATION,

Respondents

REPLY OF RESPONDENTS

Local No. 23, Oil Workers International Union, CIO, F. A. McDuffie, and E. R. McAdams, in Opposition to Petition for Writ of Certiorari

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This reply is submitted on behalf of Respondents, Local 23 of the Oil Workers International Union, CIO, and F. A. McDuffie and E. R. McAdams, two of the officers and members of Local 23. These are all the defendants below except Gulf Oil Corporation, the employer in this case, which will submit its own position.

The statute involved is the National Labor Relations Act, 29 U.S.C.A. 151, et seq.

Questions Presented

We do not agree that this case presents the questions stated in the petition.

I. As to the first question, our position is based upon two fundamental facts: (1) In essence, this is a suit by a certified bargaining agent against a jointly certified bargaining agent for breach of a private agreement between the two; and (2) federal jurisdiction is not invoked by this claim that "two line" seniority was negotiated in a single labor contract and that only "one line" seniority will satisfy the statute or the Constitution. This complaint is awry of an allegation of "discrimination" in the legal sense, there being no well pleaded facts to suggest that defendants caused or might cause the loss of a single job or seniority position actually held by a Negro, or that the contract fails to provide better and increasing job opportunities for Negroes, or that a systematic or perpetual restraint exists, or that defendants did less for plaintiffs than they could do on this occasion, but only that the defendants achieved less than perfection for the duration of the contract which they signed on April 17, 1954.

II. As to the second question, we understand that it was not at any point in the proceedings below decided adversely to Petitioners. As to this point these Respondents sided with Petitioners in the Court of Appeals contrary to the position urged by the Respondent Gulf.

Statement

The statement of the case, Petition p. 3, is correct as far as it goes, but it does not adequately describe the status of the parties or the other facts relevant to federal jurisdiction.

This suit was filed by a certified bargaining agent, Local 254, the Negro local, joined by two individuals, John Syres and Louis J. Warrick, acting as representatives under Rule 23(a) of "Members of Local 254 and/or employees of Gulf Oil Corporation" (R. 5).

These Respondents, the union defendants below, are Local 23, likewise a certified bargaining agent, and F. A. McDuffie and E. R. McAdams, who are members and officers of Local 23 (R. 1). F. A. McDuffie is also sued as a representative under Rule 23(a) of "all other persons similarly situated who are members of Local 23."

The relatioinship between the two local unions is that they are jointly certified to represent the same group of employees—namely: all the employees of the appropriate bargaining unit at the Port Arthur, Texas refinery of Gulf. The complaint alleges that plaintiff is a "component element of the exclusive bargaining agent" (R. 6). This allegation of joint certification is confirmed by the published decision of the National Labor Relations Board.[1]

Under this arrangement each local jointly and equally with the other is the owner of the statutory power, and the Negro local is as much the representative of the white employees as the white local is of the Negro employees.[2]

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[1] In the matter of Gulf Oil Corporation (Port Arthur Refinery) and Oil Workers International Union, Locals 23 and 254, Case No. 16-R-557, 58 NLRB 978. The amended certification of representatives, dated October 13, 1944, is reproduced in this brief as Exhibit A. It jointly certifies O.W.I.U. Locals 23 and 254 as the exclusive representative of all the employees in operating and maintenance at the Port Arthur refinery with the exception of certain specified classifications.

[2] **Wm. Cameron & Co., Inc.** (1952), 98 NLRB 969 at p. 973 (29 LRRM 1456):

At least from the standpoint of pure mechanics, this unique suit by a certified bargaining agent against its partner and against part of the individual employees whom it represents is a reversal of the alignment in *Steele*[3] and *Tunstall*[4] where the plaintiffs were individuals who invoked the implied statutory obligations owed to them by the certified bargaining agent.

Following the dismissal by the trial court, Local 254, although here a Petitioner, did not give notice of appeal,

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"The Teamsters and the Carpenters desire to go on the ballot as a single, joint representative. The Employer opposes this on the grounds that it is a subterfuge to defeat a finding of a unit on an over-all basis. No showing has been made that, if selected, the Teamsters and the Carpenters will not bargain on a joint basis for the whole unit. Board precedent has fully established the propriety of two or more labor organizations acting jointly as bargaining representative for a single group of employees. We see no reason to depart from such precedent in the present instance, and accordingly find that the Teamsters and the Carpenters may appear jointly on the ballot in the election directed hereinafter. If they should win, they will be certified jointly as the bargaining representative of the employees in the entire appropriate unit. The Employer may then insist that the Teamsters and the Carpenters do in fact bargain jointly for such employees as a single unit."

Pacific Maritime Association (Dec. 1954), 110 NLRB No. 254, at page 2 (35 LRRM 1299):

" * * * Board precedent has fully established the propriety of two or more labor organizations acting jointly as bargaining representative for a single group of employees. Wm. Cameron & Co., Inc., 98 NLRB 969, at 973 * * * "

[3] **Steele v. Louisville & N.R. Co., et al.**, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 (1944).

[4] **Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, Ocean Lodge No. 76, et al.**, 323 U.S. 210, 65 S. Ct. 235, 89 L. Ed. 187 (1944).

this notice being limited to the individual plaintiffs Syres and Warrick (R. 21). For this reason the opinion of the Court of Appeals designates only these two individuals as appellants.

As the Petition for Certiorari shows (p. 3), the basic complaint is that on April 17, 1954, defendants negotiated with Gulf a contract providing for "two line" seniority in lieu of "one line" seniority "contrary to an agreement previously reached by the two locals." More specifically, the allegation was that before January 5, 1954 collective bargaining contracts were negotiated by a Workmen's Committee composed of eight persons selected by Local 23 and four persons selected by Local 254 (R. 7). Between December 23, 1953 and January 5, 1954, a certain agreement was designed and consummated between these two locals. The agreement was that they would amalgamate "in some specific areas" and henceforth all Workmen's Committee nominations would be made jointly by the members of both locals sitting together (R. 7). This amalgamation agreement was entered into by Local 254 solely upon the assurance that the Workmen's Committee so jointly selected would in no manner discriminate against Local 254, its members or officers. Receiving such assurances, especially that a "one line" seniority would be maintained, Local 254 agreed to amalgamate. Thereafter, because of the numerical majority of the members in favor of Local 23, the jointly selected committee was all white (R. 7-8).

The all white committee, so jointly selected, signed a collective bargaining agreement on April 17, 1954 which contained the two lines of seniority, one for Negroes and one for white employees, contrary to the agreement previously reached by the two locals (Petition for Certiorari, p. 3; R. 8-9).[5] The complaint also alleged a conspiracy

[5] The court will understand that there is no claim that there is discrimination on the face of the contract. The allegation is that

between Local 23 and the Respondent, Gulf Oil Corporation, but no act of conspiracy is set out except the execution of the contract of April 17, 1954.

There is no allegation or intimation that the union defendants caused or might cause the loss of a single job or seniority position actually held by a Negro. There is no allegation that the contract fails to provide better or increasing job opportunities for the Negro or that any systematic or perpetual restraint exists or that union defendants did less for the Negro members than was possible. In short, the whole claim is that union defendants achieved less than perfection in the contract which they signed on April 17, 1954. The duration of the contract is not alleged.

The relief prayed for was for damages, for injunction against enforcement of the collective bargaining contract, and for declaratory judgment in favor of one line of seniority (R. 12-14).[6]

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the two lines of seniority were established in the contract with the knowledge on the part of defendants that "presently only Negro employees comprise the Labor Division" and that "defendants did know that all of plaintiffs and those whom they represent were employed and did work only in the labor division or labor department of defendants corporation. . . . " (R. 9). There is no allegation that anything in the contract now or in the past would or did prevent the employer from the original employment of Negroes in either line of seniority or any department. There is no allegation that the Union has ever had contractual right or influence to affect the employer's hiring from either race for any department.

[6] Also among the questions pleaded for declaratory judgment was whether the defendants could lawfully refuse to allow "the properly designated representatives of Local 254, a component of the unit certified, the right and privilege of negotiating . . . " the collective bargaining contract (R. 4-5). However, this feature of the pleading has been at all times disregarded by plaintiffs below and has not been noticed by either court below.

Reasons for Denying the Writ

A. There is no conflict between the decision below and the Steele or Tunstall decisions. The decision below is correct in view of the alignment of the parties and the nature of the case.

The case was not decided, nor was it defended, upon any ground which denies or limits the implied statutory obligation of the certified bargaining agent not to discriminate on grounds of race. It has been recognized that the cited decisions [7] apply with equal force to the National Labor Relations Act as they do to the National Railway Labor Act, 45 U.S.C. 152. On this point, the dissenting opinion arrives at the conclusion from which Respondents started in this case. In our brief to the Fifth Circuit, we said:

> "We give full recognition to the law declared in the *Steele* and *Tunstall* decisions, and related cases, that a certified bargaining agent under the Railway Labor Act must not utilize its statutory position as the exclusive bargaining agent to discriminate against Negro non-members. This court and the Fourth Circuit have applied the law of these cases against an array of legal defenses." (Citing *Brotherhood of Locomotive Firemen, etc., v. Mitchell,* 190 F. 2d 308 (C.A. 5, 1951); *Rolax v. Atlantic Coastline Ry. Co.,* 186 F. 2d 473 (C.A. 4, 1951).)

As the court below recognized:

> "The union appellees (No. 23) refrained from contending that the Taft-Hartley Act does not cover rights of this case under any circumstances, but con-

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[7] Footnotes 3 and 4, supra.

tented themselves with saying, in this particular case, the issue is between one element of the amalgamated union against the joint bargaining agent duly certified and that the dispute concerns merely the private matter of seniority, not covered by the Taft-Hartley Act, and hence does not arise under federal laws." (Opinion p. 4; R.).

The opinion of the Court of Appeals sustained the argument of Respondents that the substance of this case as disclosed by the pleadings is breach of contract. The position which we submitted below and urge here is that *Steele* and *Tunstall* do not purport to govern or enforce the terms and conditions of an agreement made between two jointly certified bargaining agents relative to their mutual business. Repeating verbatim our position below, we again urge:

"The force and effect of those decisions can hardly be misunderstood in the area which they cover, but it is important to bear in mind both the reason for those decisions and the actual holding which they made. *First:* because the Negro plaintiffs in those cases were not members of the defendant unions nor eligible for membership, the authority of the union to act for them was derived 'not from their action or consent but wholly from the demand of the Act', 323 U.S. p. 199. Further, since the minority members were deprived by the statute of their normal right to select their own representatives and to bargain for themselves, and even of their right of 'self-help', they would be left with no means of protecting their interests unless the Act be construed, as Congress must surely have meant, to require the selected organization to fairly represent *all* members of the craft or class. Otherwise, severe constitutional questions would follow. *Second:* each of those cases on their facts were situations in which the defendant unions had literally

set upon the Negro non-members with the intent and effect of depriving them of their existing jobs or demoting them from such existing jobs.

"The all-important distinction between those cases and the present case is that here the suit is by a certified bargaining agent and two of its members against another certified bargaining agent and its members. These plaintiffs are, therefore, not the victims of any union which derives its power solely from a federal statute and without their consent, but they are in fact the holders of the federal statutory power, and they allege that they suffered damage because the jointly certified Local 23 breached the agreement between the parties at the time the two locals amalgamated. Every reason which impelled the result in the *Tunstall* and *Steele* cases is, therefore, absent, and the jurisdiction here sought to be invoked will put the federal courts in the business of policing the private agreements between certified labor organizations."

And we further submit that this is so because the implied statutory obligation arises only in behalf of plaintiffs whose natural position is impaired by the statute in favor of the bargaining agent. Petitioners would reverse the obligation (and the reason behind it) by claiming it in behalf of plaintiffs who uniquely enjoy the highest legal position known to our labor relations laws as the joint owners of the federal statutory power. Their defendants are their statutory partner and some of the individual employees whom they represent.

Williams v. Yellow Cab[8] is pertinent to this case because it illustrates that the relative position of the parties in rela-

[8] 200 F. 2d 303 (CA 3, 1952) cert. den. 346 U.S. 840, 74 S. Ct. 52, 98 L. Ed. 361.

tion to the statute is of some weight on the issue of federal jurisdiction. In *Williams* the Third Circuit held that federal jurisdiction did not exist where plaintiffs were individual members and defendant was a non-certified union. In this case Petitioners ignore our specific facts and seek this writ by quarreling with *Williams*, but plaintiffs in that case were in a different and legally inferior position when compared to these petitioners. Those plaintiffs had no statutory power to negotiate, or to decline to negotiate, an amalgamation agreement and to include conditions with reference to lines of seniority as did these petitioners. To ignore this superior legal position is to treat these Petitioners as wards of the Court, an absurd step backward for the Negro race.

B. The factual allegations do not invoke federal jurisdiction because they are far short of a claim of discrimination contrary to implied statutory obligations or Constitutional requirements.

In addition to the status of the parties, there is a second and independent reason why the dismissal was correct. This second ground concerns not only the law but the justice and right of the case from the standpoint of federal jurisdiction. If Respondents are in error, a severe load of supervision will fall on the federal courts.

As the Petition for Certiorari (p. 3) clearly reflects, the fact upon which federal jurisdiction must rest is that on April 17, 1954 Respondents negotiated a collective bargaining contract which contained two lines of seniority. For executing this contract, the union and the employer, Gulf, are said to be "in conspiracy".

Unlike the discrimination problems presented in the grand jury and school cases, it must be recognized that a collective

bargaining contract is a hybrid document. One contracting party, the union, is under lawful duty not to discriminate. The other contracting party, the employer, is free of any such statutory or constitutional restraints. The employer is free to bargain for and insist upon its own views relative to seniority, assignment, competence, and training of the labor forces. In this case, Gulf did in fact argue its legal freedom in this matter as the Court of Appeals' opinion shows (pp. 3-4; R.). Therefore, the resulting contract may not always be perfect.

It is a fact of compelled judicial notice that, in the exercise of this freedom, employers in the South (and elsewhere) have widely applied their own motions with reference to the placement of Negroes and whites in their labor forces. It must be judicially noticed, too, that our Negro citizens have not in the past enjoyed equality of job opportunity, and this was true before the unions came.

Now then, we deduce from the doctrine announced in *Tunstall* and *Steele,* and we assume *arguendo,* that confronted with this situation a certified bargaining agent has the duty and obligation to advance the welfare of its Negro members with determined purpose to improve and equalize their job opportunities and to eliminate any inferiority in job opportunity. To accomplish this purpose, the union cannot start with anything different than what it inherits, and this will often be an inequitable arrangement in which the white employees occupy one group of better jobs while the Negro employees occupy another group of inferior jobs. Within both groups, the individual employees have used up the years of their lives building "seniority" in the jobs which they actually hold and for the jobs to which they aspire. It is utterly unrealistic to say that the duty of the bargain-

ing agent includes the obligation to rescramble at once the occupants of the jobs in such a way as to totally and instantly eliminate every vestigial condition related to race. Even if a union could convince its white members to take such a drastic step, the employer could not stand for it in the interest of efficiency of operation.

For such an existing condition, several possible solutions may come to mind, but one allowable solution, we respectfully submit, is for the union to deal with an inherited discrepancy between the races by removing an equitable number of jobs from the lines of progression within the white group and make them available to the bid of the Negro group. By so doing the union, although decreasing to that extent the job opportunities of the whites, is, nevertheless, making a compensatory correction of previous inequity and commencing the elimination of discrimination. The union is not thereby "segregating". The jobs are the same as before. But this is called "two line seniority" in this complaint, and this is what the lawsuit is about.

We need not argue, and we do not argue, that this system of correction is allowable as the ultimate goal of the union's program. We can assume that the ultimate goal must be the total elimination of reference to race in the selection of bidders for open jobs. We do say that it is an allowable temporary expedient to be used within the discretion of the bargaining agent provided good faith and sincerity of purpose are present.

We do not pause to argue the infinite complexities of seniority, the use to which it is put, and the units to which it is applied. *Ford Motor Co. v. Huffman*[9] and *Aeronautical*

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[9] **Ford Motor Co. v. Huffman**, 345 U.S. 330, 73 S. Ct. 681, 97 L. Ed. 1048 (1952).

Industrial Dist. Lodge, 727 v. Campbell,[10] quoted extensively in the opinion below, leave us reassured that the Supreme Court has already given close analysis to the complexities of seniority and the broad discretion which must be vested in the bargaining agent within the framework of good faith. The only thought we can add is that "seniority" is nothing more than a system of ground rules by which a given job is made available to A instead of to B, and while the elimination of discrimination is practical and possible for any certified bargaining agent which is in good faith about it, still it is not so easy as to accept the dogmatic notion that on every occasion and on every day of history the arrangement must be "one line" and not "two lines".

In the above analysis, these Respondents have assumed the existence of the obligation of the certified bargaining agent to make these compensatory adjustments within its own ranks even to the temporary detriment of the white employee in favor of the eventual equality of all. We make this assumption without the benefit of precise judicial decision to this effect. There are those who would say that the concessions go too far. In due course the Supreme Court in a proper case must answer these questions authoritatively for the guidance of labor and management. In this case, however, we respectfully submit that the trial court was correct in the dismissal because this petition alleged nothing factual which would suggest discrimination except the matter of the two lines of seniority. Since there is nothing alleged which remotely resembles the predatory attack in *Tunstall* and *Steele*, and nothing which suggests a failure to provide better and increasing job opportunities or that

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[10] **Aeronautical Industrial Dist. Lodge 727 v. Campbell,** 337 U.S. 521, 69 S. Ct. 1287, 93 L. Ed. 1513 (1949).

a systematic or perpetual restraint exists, or that defendants did anything except that they failed to achieve perfection for the duration of the contract which they signed on April 17, 1954, the bald allegation of two line seniority alleges nothing factual which means discrimination in the legal sense. It is still good law that federal jurisdiction must affirmatively appear and cannot be inferred argumentatively from the affirmations in the pleadings. *McNutt, Governor of Indiana, et al., v. General Motors Acceptance Corp.*, 298 U.S. 178, p. 189, 56 S. Ct. 780, 785, 80 L. Ed. 1135 (1936). The dismissal below was therefore correct, especially in view of the fact that Petitioners have declined to amend at any point in the proceedings below and have preferred to stand substantially upon the naked facts set forth in their statement on page 3 of the Petition for Certiorari—namely, "the said contract was discriminatory in that it contained one line of seniority for Negro employees and one line of seniority for white employees."

From the standpoint of the exercise of certiorari jurisdiction, a Supreme Court pronouncement on the approach that a certified bargaining agent may or must take to eliminate differences in seniority would be most welcome to organized labor. However, we frankly feel that it is nearly impossible on these allegations to come to grips with sufficient actual facts in litigation to aid the Supreme Court in declaring a point at which federal jurisdiction arises to supervise the bargaining agent's exercise of discretion in matters of seniority or to control the terms negotiated with the employer. We feel that what must result in a discussion largely in vacuum—an experience that counsel has actually lived through in attempting to lay these allegations in the context of the established rules of law and the judicially known facts of life. It may be plausible at first blush to say

that two-line seniority per se gives rise to federal jurisdiction, but we submit that the contention has no merit and the judgment below was correct.

Finally, the potential questions of general interest which lurk in the background of this case are wholly obscured by the unique situation that seniority was made the subject of private agreement by a group of plaintiffs who had the statutory right and power to make the agreement.

For these limited reasons, Respondents respectfully suggest the denial of certiorari.

C. Status of the second question.

The question of exhaustion of administrative remedy before the National Labor Relations Board has not been decided adversely to petitioners.

In the Trial Court the defendant, Gulf, urged it as a ground of dismissal, but the Trial Court dismissed solely on the ground that the case "does not arise under the constitution, laws, or treaties of the United States within the purview and meaning of said Section 1331." (R. 19).

The majority opinion below did not discuss this point, but affirmed on other grounds. The dissenting opinion below declared that the point has no merit. (Opinion, pp. 17, 18).

These Respondents do not join the argument urged by Gulf. No section of the statute has been cited which is alleged to be involved under which the facts of this case might constitute an unfair labor practice. Our view on this subject is that the case is so well within the discretionary authority of the collective bargaining representative that there

is no ground for a substantial charge that the union, by exceeding its authority, committed an unfair labor practice. See especially Footnote 4 of the Opinion in *Ford Motor Co. v. Huffman*, supra.

D. **A question of mootness exists.**

We understand counsel is under obligation to call to the attention of the Supreme Court facts which may raise a question of mootness even though we are not of the view that the case is thereby rendered moot. STERN AND GRESSMAN, Supreme Court Practice, Second Edition, Chapter XIV.

Upon the certificate of counsel we advised the court that the complained of contract was of eighteen months duration and expires on October 17, 1955, upon the giving of the usual sixty days notice, which notice has been given.

While this fact may affect the prayer for injunction and for declaratory judgment, we do not see how the question of damages would be rendered moot.

Conclusion

The lower Courts have ruled correctly on the jurisdictional issue and these Respondents respectfully pray that the petition be denied.

Respectfully submitted,

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Certificate of Service

Copies of the foregoing reply have been furnished to all counsel of record for all parties.

EXHIBIT "A"

AMENDED CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9(c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that Oil Workers International Union, Locals 23 and 254, has been designated and selected by a majority of all operating and maintenance employees of Gulf Oil Corporation (Port Arthur Refinery), Port Arthur, Texas, excluding employees in units previously established (Said units being listed as Appendix "A" attached hereto), commissioned watchmen, head watchmen, graduate engineers, chemists performing analytical work, monthly paid employees performing testing work who have been in the employ of the company for less than a year, employees engaged in the bricklaying and masonry trades, including apprentices, executives, car shop subforemen, dock assistant foremen, garage subforemen, labor subforemen Nos. 1 and 2, carpenter subforemen, pipefitters subforemen, laboratory tester foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 13 day of October, 1944.

Harry A. Millis
Chairman

Gerard D. Reilly
Member

John M. Houston
Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

NOV 2 3 1955
HAROLD B. WILLEY, C

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Respondents

MOTION FOR REHEARING AND FOR ORAL ARGUMENT BY RESPONDENT GULF OIL CORPORATION

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Respondents

MOTION FOR REHEARING AND FOR ORAL ARGUMENT BY RESPONDENT GULF OIL CORPORATION

We must construe the Court's per curium opinion granting certiorari and reversing the decision of the Court of Appeals, without permitting oral argument, as a decision that the law was so clear that it would be a waste of the Court's time to hear oral argument.

We respectfully point out to the Court that the effect of its decision is to hold that the *employer* is under a duty to represent its *employees* in collective bargaining. The National Labor Relations Act explicitly prohibits such employer interference in the collective bargaining relationship.[1] This Court has held [2] that such constitutes an unfair labor practice, jurisdiction of which is conferred on the Board.

Additionally, by a "somewhat cryptic decision" of three lines [3] this Court has clothed 306 local tribunals of general jurisdiction "with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies." [4] The effect is to assign the duty of policing

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[1] 29 U.S.C. 151, et seq.

[2] Medo Photo Supply Corp. v. NLRB (1943), 321 U.S. 678, 685.

[3] "A union representing employees covered by the NLRA has a duty to represent them without racial discrimination, even if all the employees have voluntarily joined the union. This is the apparent effect of a somewhat cryptic decision by the U.S. Supreme Court in Syres v. Oil Workers International Union, reported at Par. 69550."

* * *

With respect to the Steele, Tunstall, and Howard cases, cited by the Court the Reporter further comments:

"Those decisions all held that a union representing railroad employees under the Railway Labor Act has a duty to avoid racial discrimination. **Although a greater degree of clarity would be desirable, this summary ruling of the Supreme Court seems to indicate that a union representing employees covered by the NLRA has the same duty regardless of the extent of the union membership. The Supreme Court's earlier refusal to review the Williams case, however, remains unexplained.**" (CCH Labor Law Reports, No. 381, dated 11/17/55) (Emphasis supplied.)

[4] Quoted from **Amazon Cotton Mill Co. v. Textile Workers Union**, (CA-4, 1948), 167 F. 2d 183, 190. There are now 306 Federal District Judges (Sen. Rep. No. 25, 84th Congress).

labor contracts to the District Court when Congress has placed the duty upon the Labor Board.

"It is not difficult to foresee the confusion" [5] that will necessarily result from applying the rationale of cases decided under the Railway Labor Act [6] such as *Steele, Tunstall* and *Howard* [7] cited by the Court. No prior decision of this Court has conferred such power upon the trial branch of the Federal Judiciary under Labor Management Relations Act.[8] This Court indeed, cites no case arising thereunder in support of the decision. Thus, without argument of the question, without the citation of any authority under the Act involved, this Court has opened a breach in the machinery set up for preserving the industrial peace.

The Board has asserted its power to correct abuse of power by certified bargaining agents.[9] Other circuits have denied to the trial judges such jurisdiction (e.g. *Williams v. Yellow Cab Co.*, CA-3, 1952, 200 F. 2d 302). The possibility of conflict is clear; the probability is certain. Yet, this Court has in no way delineated the scope of such power. Does this new and undefined grant extend to all unfair labor practices? If Federal Courts can police such contracts, may they not also enjoin any other unfair labor practice? The decision, as written, either (a) denies the Labor Board of power over bargaining agreements resting on racial discrimination, or (b) makes available a choice of tribunal to redress the wrong.

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[5] **Amazon,** supra.

[6] 45 U.S.C. 151, et seq.

[7] 323 U.S. 192; 323 U.S. 210; and 343 U.S. 768, respectively.

[8] 29 U.S.C. 151, et seq.

[9] Cf. **Carter Manufecturing Co.,** 59 NLRB 804 and cases cited below at 223 F. 2d 739.

The evil of permitting "shopping for a forum" between each Federal Court and the Board is crystal clear. No such result was anticipated by the Congress.[10] The potential injury to the whole machinery of collective bargaining is aggravated by the failure of this Court to speak clearly upon the subject.

We submit that it would be appropriate, before taking the momentous step of opening the Federal Courts to such type of case, to invite the Board to state its position to the Court. If the Board is prepared to protect the rights of workmen from discriminatory practices, the Federal Courts will be relieved of this unpleasant, arduous, and difficult task. The machinery designed by the Congress, staffed by experts in the field, can be used to apply the law uniformly to all.

It is time enough to confer this unusual jurisdiction upon Federal Courts when no other adequate forum is available. There was no agency to whom the school segregation problem could be entrusted. There was none under the Railway Labor Act. Federal Courts, *only*, could protect the Constitutional rights of citizens. Here, fortunately, there is a National Board equipped, trained, and available to enforce such rights. It has claimed the power, and such has never been denied.

Conclusion

The impact of this decision is such that the Respondents respectfully pray that the Court grant this Motion for Rehearing, and if upon rehearing the Court is of the opinion that the order granting the writ of certiorari should

[10] See legislative references in **Amazon**, supra, 200 F. 2d 183, 188.

stand, then let the case be restored to the docket, the National Labor Relations Board be requested to appear and state its position, that the parties be permitted oral argument, and in the alternative that the order granting writ of certiorari, as to the Respondent Gulf, be set aside and such application for certiorari be denied as to the Respondent Gulf, and for the entry of such other and further orders as may be requisite and proper in the premises.

Respectfully submitted,

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Certificate of Service

I certify that the foregoing Motion for Rehearing is filed in good faith and not for the purpose of delay.

A copy of the foregoing Motion has been mailed to counsel of record of all parties.

Attorney for Respondent Gulf Oil Corporation